

Message Text

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ACTION EUR-12

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COME-00 DODE-00 EB-07 FEAE-00 FPC-01 H-02 INR-07

INT-05 L-02 NSAE-00 NSC-05 OMB-01 PM-03 USIA-06

SAM-01 OES-03 SP-02 SS-15 STR-04 TRSE-00 FRB-03 PA-01

PRS-01 /094 W

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R 051813Z MAY 75

FM AMEMBASSY LONDON

TO SECSTATE WASHDC 0849

INFO AMCONSUL EDINBURGH

C O N F I D E N T I A L SECTION 01 OF 02 LONDON 06782

DEPT PASS TREASURY, FEA

E.O. 11652: XGDS-2

TAGS: ENRG, UK

SUBJECT: PETROLEUM AND SUBMARINE PIPELINE BILL: FURTHER
INDUSTRY REACTIONS

REF:A)LONDON 6452; B) LONDON 5944; C) LONDON A-372

SUMMARY: PETROLEUM AND SUBMARINE PIPELINE BILL HAS RE-
CEIVED SECOND READING IN COMMONS AND NOW GOES TO COM-
MITTEE FOR DETAILED EXAMINATION AND POSSIBLE AMENDMENT.
MINISTRY OF ENERGY OFFICER EXPECTS GOVERNMENT TO PRESS
AHEAD WITH COMMITTEE CONSIDERATION SO THAT VIRTUALLY ALL
OF COMMITTEES WORK WOULD BE COMPLETED BY END OF JULY.
ESSO HAS EXPRESSED THEIR CONCERNS TO US WHICH BASICALLY
ECHO THOSE OF OTHER COMPANIES REPORTED REFTEL B). ESSO
PLANS TO DISCUSS ITS OBJECTIONS WITH SECSTATE FOR ENERGY
VARLEY IN MID-MAY FOLLOWING LATTERS RETURN FROM
WASHINGTON. ESSO IS ALSO SERIOUSLY CONSIDERING OUTLINING
ITS OBJECTIONS TO DEPARTMENT AFTER IT HAS SEEN VARLEY.

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WE SUGGEST THAT WHEN VARLEY VISITS WASHINGTON MAY 7 AN

OCCASION BE FOUND TO NOTE THAT SOME US COMPANIES ARE CONCERNED BY IMPLICATIONS OF BILL FOR THEIR OPERATIONS. END SUMMARY

1. DEAN (PRESIDENT, ESSO EUROPE) AND CAMPBELL (BRITISH LAWYER FROM ESSO GENERAL COUNSEL OFFICE) CALLED MAY 2 TO DISCUSS ESSO'S PROBLEMS WITH BILL, AND IN ORAL PRESENTATION MADE IT CLEAR THEIR PRINCIPAL CONCERNS WERE:

- THE BILL PLACES CONSIDERABLE POWER IN THE HANDS OF THE SECRETARY OF STATE;
- THE BRITISH NATIONAL OIL COMPANY (BNOC) BECOMES A POTENTIALLY POWERFUL COMPETITOR WITH ITS OWN CONSIDERABLE SOURCE OF FUNDS (THE NATIONAL OIL ACCOUNT) AND A STATUS THAT IS "UNIQUE AND PRIVILEGED";
- THE BILL PROVIDES MEANS, ESPECIALLY THE RETROACTIVE REVIEW OF EXISTING LICENSES, THAT COULD BE USED TO COMPEL COMPANIES TO ACCEPT PARTICIPATION.

2. THEY ALSO LEFT "AIDE MEMOIRE" SUMMARIZING THEIR CONCERNS AS FOLLOWS:

"C. CONCERNS ABOUT THE BILL

THE MAIN CONCERNS CAN BE SUMMARIZED AS FOLLOWS:

1. BNOC

THE ESTABLISHMENT OF BNOC AND THE NATIONAL OIL ACCOUNT (NOA) IN CIRCUMSTANCES WHERE:

(A) BNOC IS VIRTUALLY AN ARM OF THE SECRETARY OF STATE FOR ENERGY (WHO APPOINTS THE BOARD, CONTROLS POLICY AND IS THE MAIN SOURCE OF FINANCE);

(B) THE SECRETARY OF STATE, IN ADDITION TO HAVING CONTROL OF BNOC AND THE NOA, IS ALSO THE REGULATORY AUTHORITY FOR BOTH UPSTREAM AND DOWNSTREAM SEGMENTS OF THE BUSINESS;

(C) BNOC IS NOT CHARGED WITH ANY CLEAR CUT ECONOMIC AND FINANCIAL OBJECTIVES ON WHICH ITS PERFORMANCE CAN BE PUBLICLY JUDGED;

(D) BNOC IS EXEMPT FROM PETROLEUM REVENUE TAX; AND

(E) THERE ARE NO REAL CONTROLS ON THE DISPOSAL OF FUNDS FROM THE NOA.

THESE FACTORS, TAKEN TOGETHER, CREATE UNPRECEDENTED POWERS IN THE HANDS OF THE SECRETARY OF STATE AND GIVE CONFIDENTIAL

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RISE TO REAL POSSIBILITIES OF:

(I) DISCRIMINATION AGAINST PRIVATE OIL COMPANIES AND IN FAVOR OF BNOC;

(II) UNFAIR COMPETITION BY BNOC IN THE DOWNSTREAM BUSINESS;

(III) UNFAIR PRESSURE BEING EXERTED ON PRIVATE OIL COMPANIES WHICH COULD ULTIMATELY RESULT IN "BACKDOOR NATIONALIZATION".

2. NEW LICENSE TERMS

THE FACT THAT THE BILL SEEKS TO RADICALLY AMEND THE TERMS OF EXISTING LICENSES (ON THE BASIS OF WHICH SUBSTANTIAL INVESTMENTS HAVE ALREADY BEEN MADE) WITHOUT ANY PROVISION FOR COMPENSATION. THIS CONCERN BECOMES EVEN MORE ACUTE WHEN IT IS RECOGNIZED THAT THE NEW CONTROLS ARE VERY WIDE BOTH IN TERMS OF THEIR SCOPE AND IN TERMS OF THE DISCRETION ALLOWED TO THE SECRETARY OF STATE

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IN THEIR EXERCISE. FOR EXAMPLE, THE CONTROLS DEALING WITH EXPLORATION PROGRAMS AND PRODUCTION RATES WOULD PERMIT THE SECRETARY OF STATE TO FORCE LICENSEES TO MAKE UNECONOMIC INVESTMENTS AGAINST THE SANCTION OF LICENSE REVOCATION (AND CONSEQUENTLY LOSS OF PRIOR INVESTMENT). IN ADDITION, THE LARGELY UNCIRCUMSCRIBED MINISTERIAL DISCRETION GIVES RISE TO THE POSSIBILITY OF ARBITRARY OR DISCRIMINATORY USE OF THE POWERS.

3. PARTICIPATION

THE BILL CAN BE SEEN BOTH AS A MEANS OF IMPLEMENTING PARTICIPATION THROUGH THE ESTABLISHMENT OF BNOC) AND AS A

MEANS OF FORCING THE INDUSTRY TO CONCEDE MAJORITY STATE PARTICIPATION IN EXISTING LICENSES. THE EXISTENCE OF WIDE DISCRETIONARY POWERS FOR THE SECRETARY OF STATE AND THE POTENTIAL FOR UNFAIR PRESSURE TO BE EXERTED AGAINST THE INDUSTRY WILL MAKE IT VERY DIFFICULT FOR COMPANIES, WHO WOULD OTHERWISE HAVE NO INCENTIVE TO AGREE TO PARTICIPATION, TO REFUSE TO ACCEDE TO THE GOVERNMENT'S WISHES."

3. ACTION SUGGESTED: REFTEL B) MAKES CLEAR THAT ESSO'S CONCERNS ARE SHARED BY OTHER COMPANIES, AND WE EXPECT CONFIDENTIAL

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FURTHER APPROACHES TO US BY SOME OF THEM. WE SUGGEST THAT WHEN VARLEY VISITS WASHINGTON MAY 7 AN OCCASION BE FOUND TO INFORM HIM IN A GENERAL WAY OF THE CONCERNS OF US COMPANIES AND TO EXPRESS THE HOPE THAT REASONABLE, MUTUALLY ACCEPTABLE MODIFICATIONS CAN BE MADE IN THE BILL IN COMMITTEE THAT WILL HAVE THE EFFECT OF REASSURING THESE IMPORTANT INVESTORS IN ONE OF BRITAIN'S MAJOR NATIONAL RESOURCES.

RICHARDSON

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